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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUPERIOR AIR PARTS, INC., . Adv. No. 09-03052-bjh
PLAINTIFF .
VS. . Dallas, Texas
THIELERT AG, . Monday, June 22, 2009
DEFENDANT .
.
IN RE .
SUPERIOR AIR PARTS, INC. . Case No. 08-36705-bjh11
DEBTOR .
.

HEARING ON MOTION FOR SUMMARY JUDGMENT
FILED BY PLAINTIFF, SUPERIOR AIR PARTS, INC.
AND MOTION TO SHORTEN THE NOTICE PERIOD FOR
THE DEBTOR'S DISCLOSURE STATEMENT

BEFORE THE HONORABLE BARBARA J. HOUSER
UNITED STATES BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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1 DALLAS, TEXAS, MONDAY, JUNE 22, 2009; 10:56 A.M.

2 (Chester Salomon appearing telephonically)

3 THE COURT: All right. *Superior Air Parts*.

4 MR. ROBERTS: Your Honor, Steve Roberts for the
5 Debtor. I'd like to start off by apologizing by the
6 Court. I was indisposed for a few minutes unexpectedly.

7 THE COURT: No problem. I'm sorry that you
8 ended up --

9 MR. ROBERTS: It was an interesting hearing to
10 listen to. I look forward to reading --

11 THE COURT: -- moving up to the end of the
12 docket.

13 MR. ROBERTS: I look forward to reading the
14 opinion. I believe we have Mr. Chester Salomon that's on
15 the --

16 THE COURT: He's not yet, but I'm going to patch
17 him in now.

18 MR. SCHULER: Good morning again, Your Honor.
19 Elliot Schuler on behalf of the Unsecured Creditors
20 Committee.

21 THE COURT: All right. Give me just one second.
22 I know I have a number someplace. Here we go.

23 (Mr. Salmon is connected by telephone)

24 THE COURT: Mr. Salomon, this is Judge Houser.
25 Are you there?

1 MR. SALOMON: I am, Judge Houser. Good morning.

2 THE COURT: Good morning. All right. I think
3 we're ready to proceed.

4 MR. ROBERTS: Your Honor, we have a Motion for
5 Summary Judgment in the adversary proceeding by the Debtor
6 against Thielert AG, Mr. Salomon's client. We also have a
7 Motion to Shorten Time on their Disclosure Statement. If
8 I may, I believe the Summary Judgment is fairly
9 straightforward, and I'd like to proceed with that first.

10 THE COURT: That's fine.

11 MR. ROBERTS: Your Honor, this has basically
12 come down to a Motion for Judgment on the pleadings. It
13 is a Motion for Summary Judgment, but the Thielert AG has
14 admitted that they're their parent, that they acquired
15 their -- they filed a proof of claim alleging a secured
16 claim, and that they have not filed -- or, there is no
17 active Uniform Commercial Code on file perfecting any of
18 their liens.

19 THE COURT: Was there a Financing Statement at
20 one time, and did it just lapse? Is that it?

21 MR. ROBERTS: Your Honor, that's the
22 speculation. Mr. Salomon may know. What we do know, that
23 in 2005, they bought the note from PNB, I believe, and
24 that the PNB transaction was done in 2002. So, it's quite
25 possible that it expired in 2007. The Secretary of State,

1 once they expire, doesn't show them on their record as
2 having been filed, which is news to me. I don't think it
3 used to be that way, but that's the way that the State is
4 operating, so we're operating on that basis. And the --
5 I'm short-circuiting it a little bit, but I know the Court
6 has read the pleadings, and I know Mr. Salomon has
7 responded briefly by saying, "Well, we might have been
8 perfected at one time."

9 I would say this, Your Honor. Somebody may need
10 to be held by responsible by TAG in not having perfected
11 the security interest, and Mr. Salomon may not be in a
12 position to stipulate or waive any issue on collateral.
13 But I think, as a matter of law, that it's quite clear.
14 They have not alleged that they have a perfected security
15 interest in their proof of claim; have not provided any
16 evidence of it; and have not provided any evidence in
17 response to our Motion for Summary Judgment. So, on that
18 basis, I would ask for the Court to enter Summary Judgment
19 aborting the lien under Section 544 of the Code, which
20 puts us in the position of a post-judgment lien creditor
21 and creditor who has a return of execution from the
22 Constable.

23 THE COURT: Very well. Mr. Salomon?

24 MR. SALOMON: Good morning, Judge. I think Mr.
25 Roberts has it substantially right. There are some slight

1 differences. I do believe, from our UCC searches, that
2 there was a security interest, a UCC filing, as
3 Mr. Roberts suggests, in 2002. It turns out that in early
4 2006, there was a subsequent UCC Financing Statement
5 filed, just identifying of the transferee from PNC to
6 Thielert AG. But it is -- he is correct that we have not
7 extended it, as I understand. When I say "we have not
8 extended it," I mean that Thielert did not extend it.

9 My firm became involved in this case in
10 December 2008, January of 2009. By that time, it appears
11 that the UCC filing had lapsed. And what we had asked in
12 our papers, Your Honor, is that there be some
13 acknowledgement that there had been a UCC filing. I
14 realize that it's not incumbent upon Mr. Roberts to so
15 indicate, but we think that for the completeness of the
16 record, that it should be stated. Now, apparently, he is
17 not in a position today to acknowledge that, so we'll just
18 have to go with what the record provides.

19 We also acknowledge, Judge, that under Section
20 544, the Trustee, i.e., the Debtor-in-Possession, does
21 have certain powers to set aside a security interest that
22 is unperfected. And as Mr. Roberts' firm has indicated in
23 its motion papers, we did, in fact, admit to an allegation
24 in the Complaint stating that there is no active UCC
25 Financing Statement on file with the Texas Secretary of

1 State perfecting the lien. So, we understand where we are
2 here. We are not in the position, again, as Mr. Roberts
3 has indicated, to voluntarily grant, or, rather, withdraw
4 the claim, or to acknowledge that we do not have a
5 security interest. We await the Court's ruling on this.
6 We understand that, given the presentation of the material
7 facts, that there is very little for us to say against the
8 motion that has been made by Mr. Roberts.

9 THE COURT: Very well. Mr. Salomon, I
10 appreciate your candor and your comments this morning, but
11 it does appear to me that, based upon the admissions made
12 by the Defendant that there is no active UCC on file --
13 did the Committee wish to be heard on this?

14 MR. SCHULER: Very briefly, Your Honor.

15 THE COURT: For what purpose? You're not a
16 party to this.

17 MR. SCHULER: Your Honor, the Committee and the
18 Debtor and TAG have had separate discussions with regards
19 to claims that the Committee has against TAG. And I will
20 say that we anticipate that this will be resolved in the
21 plan that ultimately gets filed. But we've had lengthy
22 discussions with Mr. Salomon with regards to potentially
23 equitably subordinating or recharacterizing those claims.
24 And what we have proposed to both TAG and the Debtor, and
25 I believe a stipulation has been signed between all three

1 parties, that whatever order gets entered here today will
2 expressly provide that it will not prejudice the Committee
3 in subsequent actions to equitably subordinate or
4 recharacterize those claims; that TAG will not assert res
5 judicata, or collateral estoppel, or anything along those
6 lines. I recognize, no, we're not a party in this
7 lawsuit. I just wanted to note that, and I'm not sure if
8 Mr. Roberts was going to ultimately get that before the --

9 MR. ROBERTS: Your Honor, there is a stipulation
10 on file regarding a lack of prejudice, but I don't think
11 it goes to the merits of the motion.

12 THE COURT: All right. Mr. Salomon, do you
13 agree that there is such a stipulation?

14 MR. SALOMON: There is a stipulation. I think
15 that most of what Mr. Parham says is absolutely correct,
16 but I think that we should resort to the language of the
17 stipulation, and not to counsel's characterization of that
18 stipulation. So, I'm prepared to certainly live by the
19 stipulation, which I signed last week and has now been
20 filed with the Bankruptcy Court.

21 THE COURT: Fair enough. Then I appreciate
22 everybody's comments and bringing that to my attention.
23 But in the face of the admission that there is no active
24 Uniform Commercial Code Financing Statement on file, the
25 Court will grant the Motion for Summary Judgment as moved

1 by the Plaintiff Debtor. Will you prepare --

2 MR. ROBERTS: Yes, Your Honor, we will prepare
3 an order for the Court.

4 THE COURT: Very well.

5 MR. ROBERTS: Your Honor, the next motion is a
6 Motion to Shorten the Notice Period for the Debtor's
7 Disclosure Statement. Because the Court has a tight
8 schedule, I'd like to use this as a brief opportunity to
9 bring the Court up to what's up to date.

10 THE COURT: Please.

11 MR. ROBERTS: I will tell you, what we're going
12 to ask for is about two weeks. We do not expect to have a
13 contested Disclosure Statement. There could be an
14 objection, but I haven't had a Disclosure State -- a
15 contested Disclosure Statement hearing in many years.

16 We filed our Disclosure Statement on May 15th,
17 which was the exclusivity deadline. The Committee wasn't
18 on board at that point. I would characterize it more as
19 an offer to the constituencies. We had Thielert Aircraft
20 Engines, a sister company, with a \$16 million claim. We
21 had Thielert Aircraft TAG, who Mr. Salomon represents, who
22 is a parent and a secured creditor; and as Mr. Schuler
23 referred to, had the Committee making the allegations that
24 they believe supported recharacterization or subordination
25 of those claims.

1 The process of negotiating those has continued,
2 and at the same time, our plan had called for just a
3 straight-up auction of either the equity or the assets of
4 this Debtor to fold into a Plan of Reorganization.
5 Because this is an FAA-regulated type of entity, there is
6 some value to doing a stock purchase. So, we set up a
7 Plan and a Disclosure Statement where we would not have a
8 stock report, whereas we would go forward through an
9 auction process, and whoever prevailed would roll right
10 into the Plan of Reorganization.

11 Since that time, the Creditors' Committee had
12 decided to adopt, and urge the Debtor to adopt, a proposal
13 by Aviation Parts Supply to be a stalking horse. So
14 negotiations ensued. We modified the Disclosure Statement
15 and Plan. Aviation Parts Supply was very concerned about
16 this going into August, as are the parties, because there
17 is a \$450,000 insurance premium. While we do have a
18 considerable amount of cash, we are deteriorating, if you
19 take the combined cash, accounts receivables, and
20 inventory.

21 So, up until last Thursday -- and there have
22 been negotiations with other parties. Up until last
23 Thursday, we had been working on a plan, a bidding
24 procedure, and some other documents relating to using APS
25 as a bidding horse. They would buy the parts business,

1 and the engine business would be spun off. It was a
2 fairly complicated structure that we have. However, late
3 Thursday -- or early Thursday morning, APS withdrew their
4 offer to be a bidding horse purchaser. At the same time,
5 I do expect to have today a term sheet for what we believe
6 is a far more favorable bidding horse bid by a company
7 called Brantley International.

8 So, what we intend to do, and we had hoped to do
9 it before I stood before you today, but I am going to need
10 another 24 hours, that we will not make any material
11 modifications to our Disclosure Statement after tomorrow,
12 except perhaps in a response to objections, so that
13 parties will know exactly what Disclosure Statement --
14 what modifications have been made. We may very well have
15 a stalking horse plan tomorrow, but we will still have a
16 bidding process.

17 So what we will be filing by the end of tomorrow
18 is the modifications which resolve differences between TAG
19 and the Committee, which is a major development in this
20 case, and tentatively also with TAE and the Committee.
21 So, we may have that piece locked down. In fact, I am
22 optimistic we will. We may have a stalking horse, and
23 then we are also going to call for an auction process to
24 give everybody one last chance to bid.

25 Everybody that we talked to, despite our lengthy

1 negotiations and trying to move quickly, continued to tell
2 us that July 31 is not just a "we wish we could get this
3 done" date, but an extremely critical date.

4 With that in mind, we would ask the Court to
5 allow us to have a Disclosure Statement hearing the week
6 of July 6. I believe you may be out, Your Honor. I don't
7 know. But again, we don't consider that to be
8 controversial. I would also advise the Court that
9 tomorrow we will be filing the bid procedure motion, which
10 we have had to hold off until we knew whether we had a
11 bidding horse, a break-up fee, and would ask that that be
12 set at the same time, and that we will ask when we file
13 that motion.

14 THE COURT: Bid procedures set at the same time
15 as the Disclosure Statement?

16 MR. ROBERTS: Yes. The approval, either that or
17 earlier; and I'll advise you when we file that.

18 THE COURT: The problem you're going to run into
19 is, I don't believe there will be a judge in the district,
20 a bankruptcy judge in the district the week of July 6th.
21 There is a --

22 MR. ROBERTS: If the Judge would shorten it even
23 further, we'd go for July 2nd. I will tell you, there's
24 about 65 parties in this case on our mailing list, and
25 virtually all of them are involved in this process or

1 represented in this process. Large creditors, of course,
2 I think of our seven largest creditors, that takes care of
3 -- I won't give you statistics on claims. It's a fairly
4 small case.

5 THE COURT: Well, I'm here the 6th, but I've got
6 a full docket, and there is an education program for
7 bankruptcy judges that is the balance of the week, the
8 week of the 6th. So, you can imagine how all of our
9 dockets are the day before each of us is likely leaving,
10 and I think all the judges are in attendance at that. So,
11 I don't know if we'll be able to accommodate that or not,
12 Mr. Roberts, but I will be happy to check and see what we
13 might be able to do.

14 MR. ROBERTS: We're also, as you might imagine
15 -- again, I hate to stand here telling you about things I
16 haven't filed, but we have three draft plans in process
17 waiting for the right direction to go, and I think that
18 really is happening. The -- I think it's not appropriate
19 now, but we obviously will be filing a Motion to Shorten
20 Time between the Disclosure Statement and the Plan.
21 However, we do want to give parties -- they need to have a
22 sufficient time to vote, because we're all ready. If we
23 try to get this done by August 1, we're going to need to
24 be shortening there, and that's just --

25 THE COURT: You're going to -- I will tell you

1 that, in nine and a half years, I have never shortened the
2 time for voting on a plan. So everybody just needs to
3 understand that I think that's extraordinary relief, and,
4 so, I'm not prejudging your request, but --

5 MR. ROBERTS: I appreciate your candor, Your
6 Honor. Again, I don't know what your history or
7 predisposition on a disclosure statement is, but it
8 doesn't take someone long to read one or respond to one.

9 THE COURT: No, I'm --

10 MR. ROBERTS: So, if we could get that -- if
11 there's any way to get that heard before the July 4th
12 weekend, we could hit the 25-day notice requirement for
13 the plan and be back in Court by the end of July. Of
14 course --

15 THE COURT: But, again, at this point, we don't
16 have any documents on file that you want to go forward
17 with. Is that fair?

18 MR. ROBERTS: Yes, we have the Disclosure
19 Statement. We have the Disclosure Statement, was on file
20 as of May 15th, which can be set today. I am just
21 advising the Court that --

22 THE COURT: Well, but it --

23 MR. ROBERTS: -- there will be material
24 modifications to it.

25 THE COURT: But --

1 MR. ROBERTS: But it's still a bidding process,
2 still a sale.

3 THE COURT: Well, but it's -- I mean, I'm
4 struggling that I'm going to set a May 15th Disclosure
5 Statement that you're telling me is not the right one.

6 MR. ROBERTS: It's -- there are material
7 modifications to it. It's still -- what parties were
8 given notice of on May 15th when we mailed that out is, we
9 don't have a bid yet. We're going to sell either the
10 engines, or the parts, or both. It's going to be an asset
11 sale, it's going to -- or a sale of equity, and we're
12 going to do it by auction. It also had treatment,
13 suggested treatment as between TAG and the creditors,
14 which has now, since that was the -- to put it in
15 perspective, that was basically TAG's offer to the
16 Committee. So, that offer has been improved and agreed
17 upon. So, just to give you a sense of the difference
18 between what the parties are reading.

19 And then the third thing, it may be, and instead
20 of not having a stalking horse, if nobody else shows up,
21 here's the plan, where we've got, you know, \$7 million,
22 assumption of all the purchase orders, ongoing business.
23 We might actually hit a home run in this case. So are all
24 the material modifications. And I agree with that.
25 That's why my comment is, it doesn't take very long in

1 this case for the parties that have been following it to
2 understand the modifications that I just sketched for the
3 Court orally.

4 So, you know, I'm back to asking for a hearing
5 on my existing Disclosure Statement, and if, say, the
6 modifications are too material and someone wants more time
7 and thinks it's unfair, I'm sure they would be quite
8 capable of raising that issue.

9 THE COURT: Well, but the problem is, is I'm not
10 worried about the Committee, who has been involved in the
11 negotiations. I'm worried about the other parties in
12 interest who haven't been involved in the discussions.

13 MR. ROBERTS: And, Your Honor, I wasn't
14 referring to the Committee. I was referring to the other
15 parties, if somebody gets notice of the modified plan and
16 has a chance to do so, yes.

17 THE COURT: Well, but, I mean, let's just be
18 realistic. The earliest you're going to file something is
19 tomorrow afternoon.

20 MR. ROBERTS: It could be today, but I'm not
21 going to promise that to the Court.

22 THE COURT: Right. So, you're going to file it
23 tomorrow, which is June 23rd. Even if you mail it out on
24 the 23rd, I don't know where your creditors are. I
25 haven't looked at a matrix lately. But it's going to take

1 two or three days for non-ECF parties who filed
2 appearances in the case to get it, which means that people
3 will be lucky to have it by the 26th. And you want me to
4 have a hearing either July 6th, or, frankly, if I can't
5 fit you in there, you want it to be the week of the 29th,
6 so that people would have less than a week to get the
7 document, read it, and then object, that's --

8 MR. ROBERTS: You know, it is short, and I will
9 tell you, this plan is endorsed by the Creditors'
10 Committee, and I didn't say that.

11 THE COURT: No, I --

12 MR. ROBERTS: This was a Debtor's plan, and I do
13 know that's short. But I would -- and I'm a bit
14 handicapped by not having it in front of me to explain to
15 the Court why the July drop-dead date has become important
16 to these bidders that have come to us. If I were given a
17 disclosure statement and I had a week's hearing, I would
18 have to read the disclosure statement, and I would have to
19 decide whether I think that's adequate disclosure and file
20 a response. That's a whole different process than trying
21 to advise my client whether they should have to vote on a
22 plan, whether -- I just don't think this case is that
23 complicated for someone to be able to review and respond
24 to the disclosure statement.

25 THE COURT: Well, what is the urgency? Why is

1 July 31st such a magic date?

2 MR. ROBERTS: The -- we pay quarterly insurance
3 premiums, and the quarterly insurance premiums due in
4 August are \$450,000. This is a -- the proposal that we --
5 if we have a stalking horse, it will essentially be
6 \$7 million to pay creditors, to be split up among these
7 various parties. And the -- and then the assumption of
8 about \$5 million in purchase orders, and then also the
9 assumption of obligations under our deductibles on our
10 insurance policies. So we have cash on the one side and
11 we have the pool of creditors shrinking through assumption
12 of executory contracts. And it has been the view of the
13 creditors that -- and I'll let the Creditors' Committee
14 speak for themselves, but it's about a \$450,000 reduction
15 in the purchase price if we slip beyond July 31.

16 THE COURT: Well, but I guess I don't follow
17 why. Normally, you would prorate insurance. So, why
18 isn't there a proration for --

19 MR. ROBERTS: It's not the -- it's the liability
20 insurance. Because we sell aircraft parts, we have an
21 unusual type of insurance policy. Actually, as you may
22 recall, all but one of the plaintiffs have now waived
23 their claims under the insurance policies.

24 THE COURT: Right.

25 MR. ROBERTS: However, we have an obligation to

1 pay professional fees under our \$350,000 deductible, with
2 an \$875,000 aggregate. There is an ability to buy a
3 policy, by a purchaser, to buy a policy to reduce that
4 obligation by paying a premium. Based upon our pushing
5 forward, the Court has lifted the stay for these
6 plaintiffs' personal injury cases; but that stay is
7 lifting in mid-July.

8 THE COURT: Right.

9 MR. ROBERTS: So, at that point forward, there
10 needs to be payment for the cost of the defense of those
11 suits going forward. And the buyer has to be in place to,
12 within a short period after that, to pick up the
13 obligation under the plan, or buy insurance to pick up the
14 obligation, so that there is no prejudice to go forward --
15 going forward in the litigation.

16 I didn't explain that too well, but we have a
17 very -- it's a very small group of underwriters. They're
18 not very happy that we probably have the legal right to
19 consider them to be an unsecured claim and not pay those
20 legal fees. But imagine being the buyer of this company
21 who has done that to your insurance companies, trying to
22 get insurance. So that's been -- I think this has been
23 brought to your attention more opaquely, I think, a few
24 times. We are trying to run quickly, because of the
25 deterioration of the company, the insurance premium we're

1 going to have to pay in the future. And quite frankly,
2 the insurance company is trying to preserve a relationship
3 with the insurance companies that they will provide
4 insurance going forward.

5 THE COURT: But I'm missing July 30 --

6 MR. ROBERTS: July 31 is the -- the actual date
7 is, we can stop carrying insurance once this plan is
8 confirmed, but we will not have to pay the \$450,000
9 premium. I guess that's the simplest way of saying it.

10 THE COURT: Well, but why can't you prorate the
11 premium? So, if the plan is confirmed August 10th, why
12 isn't all that you're liable for, ten days of a premium
13 into August?

14 MR. ROBERTS: Well, we could ask the purchasers
15 to adjust the price, but the purchasers have not -- that
16 has not been a part of their offer at this point. Their
17 offer -- every purchaser who has come to us has says,
18 "Look, as part of this condition, we will pick up your
19 deductible." They have negotiated with insurance
20 companies. I don't think I'm at liberty to go too far
21 down that road, but I can tell you, the insurance
22 companies' premium quote is not the same, and may not be
23 the same going forward unless they take care of going
24 backward. And with the stay lifting, frankly, because we
25 all thought we would be going faster than this, we're now

1 getting into the situation.

2 THE COURT: Well, but that's happening -- that's
3 happening as of July 15th, as I recall.

4 MR. ROBERTS: Yes, but two weeks in state court
5 and discovery requests, it's not going to be -- you know,
6 you get out to three, four, five weeks, and that would
7 start getting to more difficulty. So, that's the issues
8 in the case. It's the insurance --

9 THE COURT: So, can you not -- can you not get
10 those parties to agree to extend the time for the stay to
11 lift?

12 MR. ROBERTS: If I'm not given the relief I am
13 asking for today, I don't know what other choice I have,
14 other than it being an adjustment to the purchase price,
15 or the purchasers quite simply saying, "Okay, so it's
16 less. I'm still the high bid."

17 THE COURT: Yeah.

18 MR. ROBERTS: I think that's just as likely a
19 scenario, is, if I'm the high bidder, what do I care
20 whether it's less to these creditors?

21 THE COURT: Yeah, but -- and we're just talking
22 now.

23 MR. ROBERTS: Yes.

24 THE COURT: Because obviously, there's not a
25 motion in front of me and -- but creditors need some time

1 to decide how they want to vote on this plan. And the
2 fact that the Committee is on board, while that often is
3 very persuasive to creditors, doesn't mean that creditors
4 aren't the ones who are entitled to vote and don't need a
5 reasonable opportunity to participate, because, again,
6 once we're at the voting stage, we're now talking about
7 people who may not have been participating in this case at
8 all.

9 MR. ROBERTS: Yes, Your Honor, and I understand,
10 in theory, exactly where you were. If I was in here
11 filing a motion to expedite the plan, I would then have a
12 full set of facts for you.

13 THE COURT: Well, but you are going to be
14 asking.

15 MR. ROBERTS: Yes.

16 THE COURT: I mean, I'm responding to your
17 request --

18 MR. ROBERTS: No, I --

19 THE COURT: -- to expedite the plan, to get to
20 confirmation prior to the end of July.

21 MR. ROBERTS: Right.

22 THE COURT: I just think that's --

23 MR. ROBERTS: I'll be presenting facts that -- I
24 mean, I know you can't sit there and listen to my
25 representations about a disclosure statement or plan and

1 say, "My gosh, I would be for it," but that's essentially
2 not far off from -- if we are successful in the next 24
3 hours, we're going to be -- I'd be shocked if there's
4 anybody out there that would find a reason not to vote for
5 the plan, other than a competing bidder that might not be
6 happy about the process. So --

7 THE COURT: All right. Well, I don't -- how
8 much time do you believe you're going to need for your
9 disclosure statement here?

10 MR. ROBERTS: Again, Your Honor, I wouldn't
11 think it should take more than 15 or 20 minutes. If there
12 is an objection, I can address it.

13 (call placed by Court to Court Clerk)

14 THE COURT: All right. I'm going to --

15 MR. ROBERTS: I will disclose to the Court, we
16 will be filing an amended plan with a stalking horse
17 bidder. As I've stood here, we just received an offer.
18 Just so you're aware of that.

19 THE COURT: All right. So, what does that mean
20 vis-a-vis the current disclosure statement?

21 MR. ROBERTS: That means, instead of having,
22 we're going to sell to the highest and best -- or the
23 bidder, we're going to sell to the stalking horse, unless
24 at auction someone outbids them. And then secondly, as to
25 the treatment among the creditors, the treatments will be

1 different.

2 THE COURT: And so you'll have a specific bid
3 number?

4 MR. ROBERTS: Yes, specific bid number and
5 specific assumption of purchase orders, specific on what
6 happens with the insurance policies.

7 THE COURT: And is the amount creditors will
8 receive going up or down under the stalking horse bid?

9 MR. ROBERTS: Well, since there was no stalking
10 horse, we wouldn't know what we would have gotten; but it
11 is -- well, so, the answer is, it's going up as far as --
12 well, I don't know how else to answer that, since the
13 original plan did not have a stalking horse.

14 THE COURT: So there was no estimate of recovery
15 to creditors in the original disclose -- the current
16 disclosure statement?

17 MR. ROBERTS: There was a liquidation value in
18 there, but there wasn't one. In fact, the original one
19 said, if we don't get offers equal liquidation value,
20 we'll just throw this into our creditors' trust and
21 liquidate it. So, if anything, we have specificity.
22 We're able to give them numbers and estimates of recovery,
23 and more importantly, as you might expect, most of our
24 creditors are our suppliers. I don't know if I have told
25 you, but we assemble engines and parts.

1 THE COURT: Right.

2 MR. ROBERTS: From suppliers. We're a mini-
3 Chrysler when it comes to this. We have a supply chain,
4 so it would be very specific on the supply chain issue.

5 THE COURT: And when can you get that new
6 disclosure statement and plan on file?

7 MR. ROBERTS: My partner is working on it today.
8 I just have to circulate it to the Committee, since they
9 are a co-proponent of the plan, and make sure it's okay.
10 So, I'm hopeful we can even get it done today; but, again,
11 I can't promise that, since Mr. Schuler is sitting in the
12 courtroom instead of reading what we've written.

13 THE COURT: Well, assuming that you get it on
14 file by no later than 5:00 tomorrow, we will have a
15 disclosure statement hearing July 6th at 4:00 o'clock.

16 MR. ROBERTS: Your Honor, I very much appreciate
17 it. I understand the circumstances you're in, in trying
18 to rule on pleadings that aren't on file. I appreciate
19 your hearing us out.

20 THE COURT: So, if you don't get it on file,
21 then you're going to need to come back and we'll have a
22 further discussion about what we can do. So, but assuming
23 that you get a new plan and disclosure statement on file
24 by that deadline, then we will -- I will shorten notice
25 such that we can go to disclosure statement hearing on the

1 6th at 4 o'clock. But frankly, I probably won't require
2 written objections until noon on the 6th.

3 MR. ROBERTS: That would be fine, Your Honor,
4 except for perhaps APS.

5 THE COURT: So, to the extent, reach out to
6 people. If you hear grumbling, reach out to folks,
7 because I will tell you that my docket is set fully that
8 day. I'm putting you in at the end of the day in hopes
9 that some stuff in the afternoon falls apart. But I'm
10 hopeful that you will be able, as you have pointed out,
11 disclosure statements shouldn't be big fights; so my hope
12 is, is that you will be able to cure -- if there are
13 objections, you'll be able to cure the issues with the
14 objecting party by more disclosure, so that we can move
15 through that relatively quickly.

16 MR. ROBERTS: Yes, Your Honor.

17 THE COURT: All right.

18 MR. ROBERTS: Thank you.

19 THE COURT: Thank you. We're in recess. You're
20 excused. I'm going to be out here for a minute. Thank
21 you.

22 (Proceedings adjourned at 11:32 a.m.)
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I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in
the above-entitled matter.

/s/Diane Lancaster
Diane Lancaster
Certified Transcriber

July 15, 2009
Date